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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/430,687	10/29/1999	J. MICHAEL GREGSON	APPLDIG.014A	7627
20995	7590	12/03/2003	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			HA, YVONNE QUY M	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			2664	
DATE MAILED: 12/03/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/430,687

Applicant(s)

GREGSON, J. MICHAEL

Examiner

Yvonne Q. Ha

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Response to Amendment*

1. Claims 1-23 are pending.

### *Information Disclosure Statement*

2. The information disclosure statement filed on 4/21/03 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5-12, 14-20, 22, and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Cidon et al. (US Patent 6,269,330).

Referring to claims 1, 12, and 19, Cidon discloses a plurality of network analyzers (figure 1, reference 62) with the first and second analyzers are in data communication (figure 1, references 62, 30, 36; col.10, lines 41-45). A computer in data communication with the first and second analyzers (figure 1, references 62, 30, 36; col.10, lines 41-45, testing system, i.e. computer); the computer is configured to command the two analyzers to establish link (col.10,

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lines 41-49, agents within the testing system which controls the analyzers) and collect diagnostic data from link (figure 1, references 80, 96; col. 11, lines 58-67) and communicate data from first analyzer to computer (col. 11, lines 58-67), computer is at different location from the analyzers (col. 12, lines 3-7, operator i.e. computer is remotely).

Referring to claim 2, Cidon discloses all aspects of the claimed invention and further teaches the analyzers are placed at network boundary (col.10, lines 13-15; figure 1, reference 30 ports to external).

Referring to claims 3 and 20, Cidon discloses all aspects of the claimed invention and further teaches the network includes at least one of ATM, Frame Relay, Internet, ISDN, and SONET (col. 10, lines 1-8).

Referring to claims 5 and 11, Cidon discloses all aspects of the claimed invention and further teaches the first analyzer to measure at least one parameter in the link (col. 11, line 5-11, i.e. the agent which resides in the switch which connects to the analyzer).

Referring to claims 6, 18, and 22, Cidon discloses all aspects of the claimed invention and further teaches the parameter includes at least one of a packet loss and latency of the link (col. 11, line 5-11, i.e. the agent which resides in the switch which connects to the analyzer).

Referring to claims 7, 16, 17, and 23, Cidon discloses all aspects of the claimed invention and further teaches configuring non-intrusive data into the network (col. 12, lines 54-58; figure 1, references 60, 130).

Referring to claim 8, Cidon discloses all aspects of the claimed invention and further teaches the first analyzer is to collect baseline diagnostic data over a predetermined duration to represent a network baseline (col. 12, lines 43-58, traffic generator which includes analyzer that

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recognizes commands from testing center, col. 13, lines 14-26, sequence and time of test sequence).

Referring to claim 9, Cidon discloses all aspects of the claimed invention and further teaches the computer issues an alert when diagnostic data deviate from baseline by a predetermined threshold (col. 13, lines 48-58; col. 16, lines 22-28).

Referring to claims 10 and 14, Cidon discloses establishing first and second analyzers that are connected to the network (figure 1, references 62, 30, 36; col.10, lines 41-45); measure at least one parameter of the link (col. 11, line 5-11, i.e. the agent which resides in the switch which connects to the analyzer); determine parameter deviation from network baseline by a predetermined threshold (col. 12, lines 43-58, traffic generator which includes analyzer that recognizes commands from testing center, col. 13, lines 14-26, sequence and time of test sequence); issue an alert in the event that the parameter deviates from the predetermined baseline of network (col. 13, lines 48-58; col. 16, lines 22-28).

Referring to claim 15, Cidon discloses all aspects of the claimed invention and further teaches estimating statistical average of at least one parameter for the same time, day, location (col. 14, table1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 4, 13, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cidon et al. (US Patent 6,269,330) in view of Engdahl et al. (US Patent 5,691,976).

Referring to claims 4, 13, and 21, Cidon discloses all aspects of the claimed invention except failed to teach the FDL between the analyzers and computer. However, Engdahl et al disclosed the FDL for capturing the FDL channel data in every DS1 channel that tie to the clock lines (col. 32, lines 11-14). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use this type of link to achieve non-intrusive signal by means of synchronizing the link (part of the frame within the link). One of ordinary skill in the art would have been motivated to use FDL to achieve a bit for bit comparison with a protect path to provide 1:1 fault protection in the system.

#### *Response to Arguments*

5. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Nolde (US Patent 6,115,456) discloses remote control system
- Conkright et al. (US Patent 6,236,332) discloses control and monitoring system
- Hershey et al. (US Patent 6,175,934) discloses method and apparatus for enhanced service quality through remote diagnostics

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne Q. Ha whose telephone number is 703-305-8392. The examiner can normally be reached on Monday-Friday 7a.m.-4p.m. Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 703-305-4366. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

YQH



WELLINGTON CHIN  
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